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EXAMINER

ARAQUE JR, GERARDO

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/098,574	<b>Applicant(s)</b> LEPRINCE, SOAZIG	
	<b>Examiner</b> Gerardo Araque Jr.	<b>Art Unit</b> 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 179-198 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 179-198 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1 – 6, 8, 10 – 16, 19 – 27, 179 – 186, 189 – 190, 192, and 194 – 198, are rejected under 35 U.S.C. 102(e) as being anticipated by Marapane (US PGPub 2002/0010556 A1).**

3. In regard to **claims 1 and 179, Marapane** discloses a method for providing hair tinting information via a data processor, comprising:

receiving first information representative of at least one state of a subject's hair  
**(Page 1 ¶ 7; Page 2 ¶ 31 prompts the recipient to take a plurality of color measurements, which can also be carried out by a beauty counselor);**

receiving second information representative of at least one desired hair tinting result of the subject **(Page 1 ¶ 8, 10; Page 2 ¶ 31 prompts the recipient to choose from a family of colors, i.e. desired hair tinting result; wherein the family of colors pertains to the general color of shades the recipient desires);**

determining, via the processor, information relating to a plurality of hair tinting products based on at least the first information and the second information **(Page 1 ¶ 6**

– 10; Page 2 ¶ 32 based on the input as discussed above the system prompts the recipient to select from a group of achievable end hair colors which represent various color shades within the family of color selected);

providing the determined information relating to a plurality of hair tinting products (inherently included since a selection is required by the user to determine the appropriate product to acquire the desired end color; see also Block 180 – 190);

receiving third information representative of the subject's selection of at least one hair tinting product in the plurality of hair tinting products (Page 1 ¶ 6 – 10; Page 2 ¶ 32 wherein the customer would select the desired shade from the various color shades that were presented); and

determining, via the data processor, information relating to the at least one selected hair tinting product (Page 1 ¶ 6 – 10; Page 2 ¶ 29; Page 2 – 3 ¶ 32 wherein the system would present the recipient with the achievable end hair color based on the above made inputs accurately representing the post-dying color of the recipient than the ordinary color charts frequently found on the back side of most hair coloring agent packaging and recommends the particular hair coloring agent); and

providing the determined information relating to the at least one selected hair tinting product (see at least Pages 2 – 3 ¶ 32 wherein a particular hair coloring agent is provided to the user).

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4. In regard to **claim 2, Marapane** discloses wherein the receiving first information includes receiving at least one of a subject's natural hair color and a subject's percentage of senescent hair (**Page 2 ¶ 30**).

5. In regard to **claims 3, 180 – 182, 184, and 186, Marapane** discloses wherein the first information is received from at least one of a portable measuring device, a touch-screen display, a mouse, and a keyboard (**Page 6 – 7 ¶ 134 – 139**).

6. In regard to **claim 4, Marapane** discloses further comprising: providing a plurality of natural hair color examples, wherein receiving first information comprises receiving a subject's natural hair color selection corresponding to one of the plurality of natural hair color examples which best corresponds to the subject's natural hair color (**Page 2 ¶ 31**); and storing the subject's natural hair color selection (**inherently included**).

7. In regards to **claim 5, Marapane** discloses further comprising: providing a plurality of examples of senescent hair percentages, wherein the receiving first information comprises receiving a subject's percentage of senescent hair selection corresponding to one of the plurality of examples of senescent hair percentages which best corresponds to the subject's percentage of senescent hair (**Page 3 ¶ 40**).

8. In regard to **claim 6, Marapane** discloses further comprising: receiving product information corresponding to the plurality of hair tinting products, wherein the received product information includes at least one of suitability of covering a percentage of senescent hair, natural application base, color effect obtained, color trademark, base shade, shade of highlights, lightening power, bleaching power, tone, product range, and product duration (**Page 1 ¶ 10; Figure 12**).

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9. In regard to **claim 7, Marapane** discloses wherein the product information is received from a local storage medium, including at least one of a hard disk and a solid state memory **(Page 6 ¶ 135 - 137)**.

10. In regards to **claim 8 and 185, Marapane** discloses wherein the product information is received over a network **(Page 7 ¶ 137)**.

11. In regard to **claim 10, Marapane** discloses wherein the product information is representative of products marketed under at least one brand name **(Figure 2)**.

12. In regard to **claim 11, Marapane** discloses further comprising:

selecting from the plurality of hair tinting products, based on the subject's percentage of senescent hair, a first subset of hair tinting products **(Figure 8)**; and

selecting from the first subset, based on the subject's natural hair color, a second subset of hair tinting products **(Figure 9)**.

13. In regard to **claim 12, Marapane** discloses wherein the selecting from the first subset comprises:

selecting at least one of a) hair tinting products having a natural application base corresponding to the subject's natural hair color **(inherently included when deciding on a product)**, and b) hair tinting products which satisfy at least one condition specific to at least one type of color result **(Logically required since a specific color result requires for the corresponding hair tinting product. That is to say, if the recipient wants to have their hair dyed red then the hair tinting product that would be selected would be for dying the recipient's hair red, not the hair tinting product for dying the recipient's hair blonde, for example.)**.

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14. In regard to **claim 13, Marapane** discloses wherein the receiving second information includes receiving a desired type of color result by the user, wherein the desired type of color result is selected from attainable types of color result (**Page 1 ¶ 6 – 10**).

15. In regard to **claim 14, Marapane** discloses wherein the attainable types of color result include at least one of lightness, colored shade, and cover senescent hair (**Page 3 – 4 ¶ 40 – 41**).

16. In regard to **claim 15, Marapane** discloses wherein the lightness includes at least one of streaks and whole head (**inherently included when deciding on a product see also Page 2 ¶ 32**).

17. In regard to **claim 16, Marapane** discloses wherein the colored shade includes at least one of intense result, natural result, and colored streaks result (**inherently included when deciding on a product see also Page 2 ¶ 32**).

18. In regards to **claim 19, Marapane** discloses wherein the providing information relating to a plurality of hair tinting products further comprises providing ranges of hair tinting products (**Figure 10**).

19. In regards to **claim 20, Marapane** discloses wherein the receiving third information representative of the subject's selection further comprises receiving information associated with at least one desired range (**Page 2 ¶ 30**).

20. In regard to **claim 21, Marapane** discloses further comprising:  
receiving a selection of at least one desired range of hair tinting products (**Page 1 ¶ 8, 10; Figure 9**); and

providing information relating to the hair tinting products having at least one range corresponding to the at least one desired range (**Page 1 ¶ 6 – 10**).

21. In regard to **claim 22**, **Marapane** discloses wherein at least one shade is associated with the at least one range (**Figure 12**).

22. In regard to **claim 23**, **Marapane** discloses further comprising: receiving information related to a subject's desired tone (**Page 1 ¶ 8, 10; Figure 9**); determining the hair tinting products within the at least one range having a tone corresponding to the desired tone (**Page 1 ¶ 6 – 10**); and indicating at least one shade which corresponds to the desired tone (**Figure 12**).

23. In regard to **claim 24**, **Marapane** discloses further comprising enabling the subject to purchase at least some of the hair tinting products (**inherently included wherein Marapane discloses that the system could be used in a salon which would indicate that a purchase would be made Page 2 ¶ 29**).

24. In regard to **claim 25**, **Marapane** discloses further comprising offering at least some of the hair tinting products for sale (**inherently included wherein Marapane discloses that the system could be used in a salon which would indicate that a purchase would be made Page 2 ¶ 29**).

25. In regard to **claims 26 and 189**, **Marapane** discloses wherein the method is performed at least substantially entirely at a point of sale for the hair tinting products (**inherently included wherein Marapane discloses that the system could be used in a salon which would indicate that a purchase would be made Page 2 ¶ 29**).



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26. In regard to **claim 27**, **Marapane** discloses wherein the information relating to at least one hair tinting product comprises information relating to at least one of a plurality of products and a plurality of subsets of products (**Figures 8 – 10**).

27. In regard to **claim 183**, **Marapane** discloses wherein the measuring device is a portable instrument for measuring a subject's hair color (**Page 2 ¶ 31**).

28. In regards to **claim 190**, **Marapane** discloses wherein the apparatus operates substantially as a stand-alone unit without being connected to a computer server (**Page 2 ¶ 31**).

29. In regard to **claim 192**, **Marapane** discloses further comprising at least one swatch sampler (**Page 3 ¶ 40**).

30. In regard to **claim 194**, **Marapane** discloses further comprising at least one swatch sampler for estimating the quantity of senescent hair (**Page 3 ¶ 40**).

31. In regard to **claim 195**, **Marapane** discloses wherein the at least one swatch sampler further includes two sets of samplers enabling the quantity of senescent hair to be evaluated, one corresponding to a subject having fair hair and one corresponding to a subject having dark hair (**Page 3 ¶ 40**).

32. In regard to **claim 196**, **Marapane** discloses wherein the at least one swatch sampler for estimating the quantity of senescent hair is comprised of at least five swatches, corresponding to 0%, less than 30%, 30% to 50%, 50% to 80%, and greater than 80% (**Page 3 ¶ 40**).

33. In regard to **claim 197**, **Marapane** discloses wherein the apparatus is adjacent to at least one set of shelves suitable for hair tinting products (**Page 2 ¶ 29; wherein the**

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**invention as disclosed by Marapane can be used in a salon, which would obviously have the apparatus adjacent to shelves suitable for hair tinting products).**

34. In regard to **claim 198**, **Marapane** discloses further comprising a lighting means for lighting a subject's hair (**Page 2 ¶ 29; obviously included wherein a salon would have lighting means**).

***Claim Rejections - 35 USC § 103***

35. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

36. **Claims 7, 9, 17 – 18, 187 – 188, 191, and 193** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Marapane et al. (US PGPub 2002/0010556 A1)**.

37. In regard to **claim 9**, **Marapane** discloses that the method is carried out on a network, but fails to explicitly disclose the Internet. However, it is old and well known that the Internet is also a network. Moreover, it would have been obvious to one skilled in the art using the teachings of Marapane that the method can also be carried out anywhere (**Page 2 ¶ 29**), including the Internet, in order to avoid a large gathering of people waiting within a salon, for example.

38. In regards to **claim 17**, **Marapane** discloses receiving second information includes receiving the desired duration of hair tinting (**wherein it would be obvious**

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**when a customer selects a hair dying product it would include the type of dye, i.e. temporary, semi-permanent, and permanent).**

39. In regards to **claim 18**, **Marapane** discloses further comprising:

determining the product durations for at least some of the hair tinting products **(obviously included in that all hair dying products have various durations, such as temporary, semi-permanent, and permanent); and**

selecting hair tinting products having a product duration corresponding to the desired duration **(obviously included dependent on the customers desire).**

40.

41. In regard to **claim 187**, **Marapane** discloses an image acquisition device for capturing an image of the subject for displaying on the display **(Page 1 ¶ 10 in which it would have been obvious to one skilled in the art that an image acquisition device would be required in order to carryout the method disclosed by Marapane).**

42. In regard to **claim 188**, **Marapane** discloses wherein said image acquisition device comprises a camera **(Page 1 ¶ 10 in which it would have been obvious to one skilled in the art that an image acquisition device would be required in order to carryout the method disclosed by Marapane, further still, it would have been also obvious that a camera would be an image acquisition device).**

43. In regards to **claim 191**, **Marapane** discloses that the method can be carried out in a salon wherein it would have been obvious to one skilled in the art that salons have mirrors.

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44. In regard to **claim 193**, **Marapane** discloses wherein the at least one swatch sampler includes a sampler of colored swatches comprising shade colors of black, brown, dark chestnut, chestnut, pale chestnut, dark blonde, blonde, light blonde, very light blonde, and lightest blonde (**Page 4 ¶ 41 moreover the various shades disclosed does not affect the function of the invention**).

### **Response to Arguments**

45. Applicant's arguments filed **11/7/2008** have been fully considered but they are not persuasive.

### **Rejection under 35 USC 101**

46. Rejection under 35 USC 101 has been withdrawn due to amendments.

### **Rejection under 35 USC § 102**

### **Independent Claim 1**

47. Applicant argues that **Marapane** does not disclose a method for providing hair tinting information including, among other things, "providing information relating to a plurality of hair tinting products" and "receiving third information representative of the subject's selection of at least one hair tinting product in the plurality of hair tinting products," as recited in claim 1. (Emphasis added)

The Examiner disagrees.

**Marapane** clearly states that the method is embodied in a computer system and is located at a retail counter for the purpose of **analyzing and recommending** hair coloring products (Page 2 ¶ 29).

The applicant has previously presented this argument and provided the following rationale, which stated:

“...the system described in the rest of the Marapane publication appears to be configured to provide information about only a single product once the user has made a selection from a plurality of colors. Because paragraph [0029] refers to an embodiment wherein the system is located at a retail counter, the mention of recommending plural products in paragraph [0029] appears to merely refer to the fact that multiple customers who visit the retail counter might each have a product recommended to them. In other words, this appears to be describing multiple occasions on which the system is used, and not any capability of displaying a plurality of products from which to choose.” **(see applicant’s Remarks on February 28,2008)**

Again, the Examiner asserts what has been stated in the Office Action sent on **6/12/2008** which stated the following:

“However, what is stated in ¶ 29 is that the system is used for the purpose of “analyzing and recommending.” In other words the system is not merely there to just recommend products, but to recommend products based on the hair analysis that is described within ¶ 30 – 32. ... **claim 18** further discloses that the method can be conducted in various locations, such as a salon and a retail store. From this it can be concluded that the method and system is fully capable of displaying a plurality of products since the method and system is conducted in a

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salon or retail store wherein a salon and retail store carries a variety of hair tinting products.

Further still, **Marapane** also discloses that the system identifies the associated hair color agents (e.g. VS Sassoon products) (**Page 2 ¶ 30**).

Although, the disclosure only shows one brand of tinting products it is inherent that within that one brand there are multiple products in order to achieve the different hair color results, a point that has already been discussed in prior Office Actions as well as over the telephone interview conducted on January 29, 2008. Despite of this, the applicant still disagrees with this assertion. The applicant asserts that displaying "end colors" is not equivalent to displaying "products" (**see at least bottom of Page 45 of applicant's Remarks September 21, 2007**).

According to this logic, it appears to the Examiner that the applicant believes that **Marapane** discloses that the recommended product, i.e. one hair dying product, can somehow achieve all of the displayed "end colors". However, as already discussed, the Examiner asserts that by displaying an "end color" the associated color agent (product) would be displayed or presented, in the event that the method and system is carried out at a salon, to the customer."

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The applicant's current arguments states:

"Rather, Marapane discloses identifying and displaying "achievable end colors from which the recipient will be prompted to select. ...Further, Marapane discloses prompting a recipient to select from the displayed achievable end colors and recommending to the consumer a hair coloring agent based on the consumer's selection."

However, the Examiner asserts that this is no different from the claimed language since it is asserted that, "...identifying and displaying "achievable end colors from which the recipient will be prompted to select," and," prompting a recipient to select from the displayed achievable end colors and recommending to the consumer a hair coloring agent based on the consumer's selection," is equivalent to the applicant's claim language, which discloses, "providing information relating to a plurality of hair tinting products" and "receiving third information representative of the subject's selection of at least one hair tinting product in the plurality of hair tinting products." Specifically, the Examiner asserts that, "providing information relating to a plurality of hair tinting products," is equivalent to "displaying achievable end colors," since the displayed achievable end colors is information that is provided to a consumer that is **related** to the plurality of hair tinting products, wherein the Examiner has already discussed in great detail on how Marapane does, indeed, disclose a **plurality** of **products**. Moreover, the prompt disclosed by Marapane would have been recognized by one having ordinary skill in the art that a selection is provided by the recipient, which in turn is equivalent to

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receiving information representative of the recipient's selection of the desired hair tinting product.

48. Regarding applicant's argument stating, "Only after a consumer has selected a desired hair color does Marapane provide any information about a product. See Fig. 12," the Examiner asserts that an explanation of the order of operation regarding how the product recommendation is attained has been discussed in great detail in previous Office Actions and that the applicant has yet to provide any substantial support of how the Examiner's interpretation is incorrect. In other words, the Examiner asserts that the applicant has yet to rebut the Examiner's interpretation on how the disclosed flowchart and disclosure of **Marapane** is equivalent to applicant's claimed invention. It is asserted that the applicant is only selecting small portions (**i.e. Figure 12**) of **Marapane's** disclosure, such as what was done with ¶ 29, to support the applicant's arguments without taking into account **Marapane's** full disclosure of the claimed invention along with the Examiner's interpretation of equivalence.

Specifically, the applicant argues that **Marapane** does not disclose that the information regarding the product is not performed before a consumer's selection of desired hair color. However, the Examiner asserts that previous claim 1 does not disclose this limitation. **Claim 1** discloses that information regarding a recipient is received before any information regarding a product is provided (**see steps a - c of claim 1**). Next, the applicant continues to argue that **Marapane** does not disclose a plurality of products. However, as was explained by the Examiner numerous times in previous Office Actions, **Marapane** discloses the use of a specific brand, i.e. VS



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Sassoon, which inherently includes multiple products, each designed for a specific end color. Again, the Examiner has explained that each end color is related to a specific product in the VS Sassoon family, which ultimately is equivalent to providing information relating to a plurality of hair tinting products. In other words, providing information relating to a plurality of hair tinting products is equivalent to providing end colors to a user (information), which inherently are related to specific products from the family (plurality) of products of the VS Sassoon family.

The applicant then argues that, "The Office Action alleges that, because he system of Marapane is disclosed to be utilized in a salon or a retail store that may carry a variety of hair tinting products, and because a beauty counselor may carry out the hair analysis, "the method and system [of Marapane] is fully capable of displaying a plurality of products. ... However, the Office Action never points to any disclosure of such a hypothetical beauty counselor providing/determining information about hair tinting products based on at least "first information representative of at least one state of a subject's hair" and "second information representative of at least one desired hair tinting result of the subject."

However, the Examiner stated the following:

"However, what is stated in ¶ 29 is that the system is used for the purpose of "analyzing and recommending." In other words the system is not merely there to just recommend products, but to recommend products based on the hair analysis that is described within ¶ 30 – 32. **Marapane** further discloses that a beauty counselor can be used in order to carry out the hair analysis and **claim 18**

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further discloses that the method can be conducted in various locations, such as a salon and a retail store. From this it can be concluded that the method and system is fully capable of displaying a plurality of products since the method and system is conducted in a salon or retail store wherein a salon and retail store carries a variety of hair tinting products.”

As can be seen, the Examiner clearly did, indeed, point out the possible use of a beauty counselor **(31)**, as well as the invention taking place in either a salon or retail store **(claim 18)**. With that said, as well as taking into account the rejection above, a determination (which includes the step of providing) of information **related (not about, as the applicant argues)** to hair tinting products based on at least “first information representative of at least one state of a subject’s hair” and “second information representative of at least one desired hair tinting result of the subject,” is disclosed by **Marapane**.

The applicant then argues that, “...even if a beauty counselor were to determine information relating to a plurality of products, such a determination would not be “via a data processor.” First, the Examiner is perplexed as to why the applicant would argue that the determination is not performed by data processor, especially when the applicant just argued that the beauty counselor is only hypothetical and supposedly not disclosed by **Marapane**. If it was the case that **Marapane** did not disclose a beauty counselor, how else is the invention performed? In other words, without the guidance of a beauty counselor the only logical choice would be that a computer, which inherently includes a data processor, is involved. Regardless, the Examiner asserts that although **Marapane**

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does disclose an embodiment wherein a beauty counselor is involved, **Marapane** discloses that the actual reading and processing of the information is performed by a computer, such as the calorimeter spectrophotometer, and that the beauty counselor is using the computer to take the readings.

49. Regarding the applicant's argument about the inherency discussion found in the Office Action that was sent out on June 12, 2008 (**see also the October 30, 2007**) the applicant states:

"To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is **necessarily** present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient."

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (emphasis added) (cited in M.P.E.P. § 2112)"

Specifically, the applicant argues that, "Even if a salon or retail store having the Marapane system were to carry a variety of hair tinting products, as alleged, that would not necessitate that the system be configured to display a plurality of products. Since the Marapane system only provides information about a single product based on a user selected color, there would not have been a reason that a beauty counselor would provide information about a plurality of products. That is, since the Marapane system indicates only one product with which a desired color can be achieved, a beauty counselor would not have had any reason to tell the customer about other products in the store (besides the one product displayed by the system) based on the information provided by the system."

However, the Examiner disagrees that it would not necessitate that the system be configured to display a plurality of products. Again, it appears to the Examiner that the applicant believes that **Marapane** discloses that the recommended product being displayed to the user can somehow achieve all of the displayed “end colors”. However, as already discussed, the Examiner asserts that by displaying an “end color” the associated color agent (product) is being displayed or presented to the customer.

Moreover, as already discussed **Marapane** has already made it clear that each color is associated with a coloring agent, i.e. tinting product within the family (brand) of VS Sassoon products. One of ordinary skill in the art of hair tinting would have recognized that the system of **Marapane** provides VS Sassoon products (brand) and that within the family (brand) of VS Sassoon products the system will display which specific coloring agent will be used to achieve the color result. One of ordinary skill in the art would have also recognized, based on the current claim language, the “information relating to a plurality of hair tinting products” can come in different forms. That is to say, the information can be in the form of words or pictures; and, in the event, that only an image of a color result is displayed (provided information), for example, then it can be surmised that the image of each color result is, indeed, **related** to the corresponding coloring agent (product).

In the end, **claim 1** claims and is interpreted as follows:

1. A method for providing hair tinting information, comprising:

receiving first information representative of at least one state of a subject's hair (**Page 1 ¶ 7; Page 2 ¶ 31 prompts the recipient to take a plurality of color measurements, which can also be carried out by a beauty counselor**);

receiving second information representative of at least one desired hair tinting result of the subject (**Page 1 ¶ 8, 10; Page 2 ¶ 31 prompts the recipient to choose from a family of colors, i.e. desired hair tinting result; wherein the family of colors pertains to the general color of shades the recipient desires**);

determining, via the data processor, information relating to a plurality of hair tinting products based on at least the first information and the second information (**Page 1 ¶ 6 – 10; Page 2 ¶ 32 based on the input as discussed above the system prompts the recipient to select from a group of achievable end hair colors which represent various color shades within the family of color selected**);

providing the determined information relating to a plurality of hair tinting products;

receiving third information representative of the subject's selection of at least one hair tinting product in the plurality of hair tinting products (**Page 1 ¶ 6 – 10; Page 2 ¶ 32 wherein the customer would select the desired shade from the various color shades that were presented**); and

providing information relating to the at least one selected hair tinting product (**Page 1 ¶ 6 – 10; Page 2 ¶ 29; Page 2 – 3 ¶ 32 wherein the system**

would present the recipient with the achievable end hair color based on the above made inputs accurately representing the post-dying color of the recipient than the ordinary color charts frequently found on the back side of most hair coloring agent packaging and recommends the particular hair coloring agent); and

providing the determined information relating to the at least one selected hair tinting product.

**Dependent Claims:**

50. All rejections made towards the dependent claims are maintained due to the lack of a reply by the applicant in regards to distinctly and specifically point out the supposed errors in the examiner's action in the prior Office Action (37 CFR 1.111). The Examiner asserts that the applicant only argues that the dependent claims should be allowable because the independent claims are unobvious and unpatentable over Marapane.

***Conclusion***

51. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. A./  
Examiner, Art Unit 3689  
1/30/09

/Tan Dean D. Nguyen/  
Primary Examiner, Art Unit 3689  
January 31, 2009



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